

Decision 01-10-053 October 25, 2001

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Southern California Edison Company (U 338-E) for Authority to Lease Available Land on the Mandalay-Santa Clara 220 kV Transmission Right of Way to Montalvo Development Partners, LLC.

Application 01-05-050
(Filed May 23, 2001)

O P I N I O N

1. Summary

Southern California Edison Company (SCE) seeks authority to lease to Montalvo Development Partners, LLC (Montalvo) a four-acre site located on a portion of SCE's Mandalay-Santa Clara 220-kilovolt (kV) transmission right-of-way in the City of Ventura. Montalvo would develop a small retail and office building (8,500 square feet), additional project access, landscaping, parking area and a public park with a bicycle path. SCE states that such use will not interfere with its utility operations. The application is unopposed. The City of Ventura Planning Commission has issued a mitigated negative declaration for the project as part of its environmental review. This decision grants authority for the utility to enter into the proposed lease.

2. Background

The four-acre site is used by SCE for above-ground transmission and distribution lines.¹ SCE acquired the property in 1958. Total book value for the four acres is \$32,593.44. The site would be an addition to an adjacent, 28-acre retail and community shopping center development project planned by Montalvo. The current occupant of the four-acre site is Boething Treeland Farms, which would occupy a smaller section of the Mandalay-Santa Clara 220-kV right-of-way once the Montalvo project is completed.

SCE states that it has worked closely with Boething, a horticultural licensee that occupies 40 acres of other SCE land in the City of Ventura, to ensure that the nursery could use a smaller facility next to the subject site. If the Boething license remained in effect, it would generate only \$4,000 per year in revenue. In contrast, under the proposed lease with Montalvo, the four acres will generate annual revenue of \$95,000, which represents a substantial increase in revenue for the benefit of SCE and its ratepayers.

Under the proposed new lease, SCE would continue to own and operate its transmission facilities, and it would retain unobstructed access to the site. Revenue from the lease would be shared with SCE's ratepayers.

3. Terms of the Lease

The initial term of the lease to Montalvo is 30 years, with two 10-year renewal terms. The lessee would pay annual base rent of \$95,000 for the first 10 years. The base rent would be adjusted on the 11th and 21st year of the lease term

¹ The site is bounded on the north by residential property, on the east by the continuation of the Mandalay-Santa Clara right of way, on the west by South Victoria Avenue, and on the south by other Montalvo property.

and upon each renewal option based upon then current fair rental value of the property, excluding the value of Montalvo improvements.

The agreement provides that the lessee's activities must not interfere with the operation of the electrical transmission facilities that cross the site. Montalvo would not be permitted to store hazardous substances on the site, and the company would be required to maintain at least a 17-foot clearance from all overhead electrical conductors. SCE also would require the lessee to maintain a 50-foot radius around all tower legs and a 10-foot radius around all steel and wood poles. The lessee would provide and maintain access roads on the property. The lessee would be responsible for obtaining all permits and approvals for construction, as well as any zoning changes or use permits required for the operation of a self-storage facility.

Under the lease, Montalvo would be responsible for all personal property taxes and fees levied against the property and improvements, and would maintain comprehensive liability insurance, auto insurance and workers' compensation insurance. The company would indemnify SCE against all liability for damages or injury to persons or property not caused by SCE's negligent or willful misconduct.

4. Determination of Best Secondary Use

SCE states that its objective in selecting secondary uses for utility property is to find those uses that will provide the greatest revenue consistent with the utility's obligation to maintain the safety and reliability of its facilities. Because of the above-ground power lines crossing the site, secondary uses are limited by restrictions and height clearances. SCE states that it determined that the Montalvo retail and office development proposal offered the highest level of potential revenue for this particular site.

To evaluate the rental value for the site, SCE reviewed rent paid by comparable facilities in Southern California. According to SCE, the proposed lease provides for rental payments that fall within the acceptable market range and are comparable to the annual base rent as a percentage of gross income found in other agreements approved by this Commission.

5. Selection of Lessee

SCE states that Montalvo was awarded an option to lease the site because of the proposed site use and the strong background of the company's managing partner, KMI Real Estate Groups, Inc. (KMI). Since its formation in 1991, KMI has developed, redeveloped or managed a portfolio of retail properties approaching two million square feet. The site here would be a small part of KMI's proposed 32-acre Montalvo Hill Village project. When completed, the Montalvo Hill Village project would be a community and neighborhood shopping center anchored by tenants such as Ralph's Market, Long's Drugs, and L.A. Fitness Center.

SCE states that KMI employs a broad range of real estate professionals with experience in leasing, design, government relations, architect/engineer coordination and construction management. In addition to maintaining its own real estate portfolio, KMI serves a wide range of institutional clients, such as Chase Manhattan Bank, Long Beach Bank, Sun America Insurance and Provident Savings Bank. The KMI principals are Jay Kerner, president, and Scott Yorkison, vice president.

Kerner has 12 years of experience in the development and management of commercial and multi-family properties. He oversees KMI's large commercial property portfolio and its six multi-family properties, and he runs KMI's offices in Los Angeles and Ventura counties. Yorkison oversees KMI's current

300,000-square-foot leasing portfolio and has an additional 500,000 square feet in immediate development. His responsibilities also include property acquisition, project planning and management and construction management.

6. Environmental Review

SCE states that Montalvo has obtained zoning and development approvals required by the City of Ventura for development of its 32-acre retail and office project, including the four-acre site that is the subject of this application. On May 2, 2000, the City of Ventura Planning Commission adopted the final mitigated negative declaration for the project in Case No. EIR-2248 and approved the project. (Case No. PD-744-ARB-2712.) Furthermore, in accordance with Article 6.2(h) of lessee's agreement with SCE, lessee must procure and deliver to SCE evidence of compliance with all applicable codes, ordinances, regulations and requirements for permits and approvals, including but not limited to grading permits, building permits, zoning and planning requirements, and approvals from the various governmental agencies and bodies having jurisdiction.

Under the California Environmental Quality Act (CEQA), the Commission must consider the environmental consequences of a project that is subject to the Commission's discretionary approval. (Pub. Resources Code § 21080.) Where (as here) a project is to be approved by more than one public agency, one agency becomes the "lead agency" having responsibility to prepare an Environmental Impact Report (EIR) or negative declaration for the project. (CEQA Guideline § 15050, Pub. Resources Code § 21165.) Generally, if the project is to be carried out by a nongovernmental entity, the lead agency is the public agency with the greatest responsibility for supervising or approving the project as a whole. (CEQA Guideline § 15151.) All other public agencies with discretionary

approval power over the project are “responsible agencies.” (CEQA Guideline § 15381.) The specific activities that must be conducted by the responsible agency are set forth in CEQA Guideline § 15096.

In this case, the Commission’s discretionary approval involves approving SCE’s request for authority to enter into a lease. The City of Ventura appears to have greater responsibility for supervising or approving the project as a whole, because it is the agency with responsibility to approve and oversee the 32-acre retail and office development project.

As noted, the City of Ventura Planning Commission has adopted a mitigated negative declaration for the project. We are aware of no information to indicate that the determination of the City of Ventura and its Planning Commission has been appealed. Accordingly, we will rely on the lead agency’s determination that its mitigated negative declaration will govern this project under CEQA.

We take official notice that the Commission recently changed its procedures in dealing with applications of this nature. (See Decision (D.) 01-08-022, dated August 2, 2001.) We now require that the applicant submit copies of the necessary environmental documents issued by the local entity acting as the lead agency to establish that the environmental review has been conducted and any mitigation measures required under CEQA have been imposed. Since SCE in this case has submitted to us the mitigated negative declaration of the City of Ventura Planning Commission, our new procedural requirement has been met.

7. Treatment of Revenues

SCE states that all of the revenues from the proposed lease will be treated as Other Operating Revenue (OOR). In D.99-09-070, the Commission adopted a

gross revenue sharing mechanism for certain of SCE's other operating revenues. The sharing mechanism applies to OOR, except for revenues that (1) derive from tariffs, fees or charges established by the Commission or by the Federal Energy Regulatory Commission; (2) are subject to other established ratemaking procedures or mechanisms; or (3) are subject to the Demand-Side Management Balancing Account.

Under the sharing mechanism, applicable gross revenues recorded from non-tariffed products and services like the proposed lease here will be split between shareholders and ratepayers after the Commission-adopted annual threshold level of OOR has been met. For those non-tariffed products and services deemed "passive" by the Commission, the revenues in excess of the annual threshold will be split between shareholders and ratepayers on a 70%/30% basis. The proposed lease here is a "passive" product.²

8. Discussion

Section 851 of the Public Utilities Code provides that no public utility "shall...lease...[property] necessary or useful in the performance of its duties to the public...without first having secured from the [C]ommission an order authorizing it so to do." The relevant inquiry for the Commission in Section 851 proceedings is whether the proposed transaction is "adverse to the public interest." (*See, e.g., Universal Marine Corporation* (1984) 14 CPUC2d 644.)

² See Attachment B to SCE's Advice Letter 1286-E, which identifies the Secondary Use of Transmission Right of Ways and Land and the Secondary Use of Distribution Right of Ways, Land, Facilities and Substations as categories of non-tariffed products and services. Advice Letter 1286-E was filed on January 30, 1998, pursuant to Rule VII.F of the Affiliate Transaction Rules contained in Appendix A of D.97-12-088.

The proposed lease satisfies this test. The public interest is not harmed since the lease will not affect the utility's operation of the transmission lines. The Commission has determined that the public interest is served when utility property is used for other productive purposes without interfering with the utility's operation.³ Because the proposed agreement will increase the level of revenues SCE can obtain from secondary use of the land in question, with no additional ratepayer risk, the application should be approved.

In Resolution ALJ 176-3063, dated June 14, 2001, the Commission preliminarily categorized this proceeding as ratesetting and preliminarily determined that hearings were not necessary. Based on the record, we conclude that a public hearing is not necessary, nor is it necessary to alter the preliminary determinations in Resolution ALJ 176-3063.

Because the application is unopposed, and because our decision today grants the relief requested, the requirement for 30-day public review and comment is waived pursuant to Pub. Util. Code § 311(g)(2).

Findings of Fact

1. SCE is an electric public utility subject to the jurisdiction and regulation of this Commission.
2. SCE has property at the Mandalay-Santa Clara 220-kv transmission right-of-way in the City of Ventura available for secondary use, and it seeks to obtain revenue for ratepayers and shareholders through a secondary use lease.

³ In D.93-04-019, p. 3, we observed: "Joint use of utility facilities has obvious economic and environmental benefits. The public interest is served when utility property is used for other productive purposes without interfering with the utility's operation or affecting service to utility customers."

3. Subject to Commission authorization required under Pub. Util. Code § 851, SCE has negotiated a long-term lease proposal for the available property to provide lease revenues with no interference with the operation of the transmission line.

4. The proposed lessee, Montalvo, is directed by KMI, a property management firm with substantial experience in developing shopping center projects and other developments.

5. Montalvo will finance, construct and maintain a small retail and office building, parking area and a public park at the four-acre site that will be part of a 32-acre neighborhood retail and office center.

6. Revenue in excess of a Commission-established threshold will be shared 70/30 between the utility and ratepayers, by treating all revenues as Other Operating Revenue, pursuant to D.99-09-070.

7. Development of the property in question by Montalvo is subject to all applicable laws and receipt of discretionary approvals from the City of Ventura.

8. Pursuant to CEQA, where a project is to be approved by more than one public agency, one agency becomes the lead agency for purposes of preparing an EIR or negative declaration for the project.

9. Under applicable CEQA guidelines, the City of Ventura is the appropriate lead agency for CEQA purposes and the Commission is a responsible agency.

10. The applicant has submitted documentation to establish that the City of Ventura Planning Commission has adopted a mitigated negative declaration for the project.

11. Pursuant to CEQA Guideline 15050(b), the Commission has reviewed and considered the information contained in the mitigated negative declaration adopted by the City of Ventura Planning Commission.

12. There is no opposition to this application.

Conclusions of Law

1. Joint use of utility property should be encouraged in appropriate cases because of the obvious economic and environmental benefits.
2. The Commission should condition its approval of the proposed lease on lessee's compliance with all applicable environmental regulations.
3. SCE should be authorized pursuant to Pub. Util. Code § 851 to lease the designated four-acre site to Montalvo on the terms and conditions set forth in the application.
4. The proposed sharing of revenues with ratepayers conforms to the Commission's order in D.99-09-070.
5. Through its Planning Commission, the City of Ventura has reviewed the project under CEQA and issued a mitigated negative declaration.
6. Because of the benefits of this lease agreement for the utility and for ratepayers, approval of this application should be made effective immediately.

O R D E R

IT IS ORDERED that:

1. Southern California Edison Company (SCE) is authorized to enter into a lease of a four-acre site located on a portion of SCE's Mandalay-Santa Clara 220-kilovolt (kV) transmission right-of-way in the City of Ventura to Montalvo Development Partners, LLC, under the terms and conditions set forth in this application.
2. As received, all revenues from the lease authorized shall be treated as Other Operating Revenue and shall be subject to the gross revenue sharing mechanism set forth in Decision 99-09-070.

3. Approval of this application is conditioned upon lessee's compliance with all applicable environmental regulations, pursuant to the California Environmental Quality Act.

4. SCE shall notify the Director of the Energy Division, in writing, of any substantial amendments to, extension of, or termination of the lease agreement, within 30 days following the execution of such amendments, extensions or termination.

5. Application 01-05-050 is closed.

This order is effective today.

Dated October 25, 2001, at San Francisco, California.

LORETTA M. LYNCH

President

HENRY M. DUQUE

RICHARD A. BILAS

CARL W. WOOD

GEOFFREY F. BROWN

Commissioners